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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

CC Docket No. 96-98

In the Matter of )  
 )  
Implementation of the Local )  
Competition Provisions of the )  
Telecommunications Act of 1996 )

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PETITION FOR CLARIFICATION

GTE Service Corporation, on behalf  
of its affiliated domestic telephone  
operating and wireless companies

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## TABLE OF CONTENTS

	<u>Page</u>
SUMMARY .....	ii
INTRODUCTION .....	2
I. THE COMMISSION SHOULD CLARIFY THAT THE PROHIBITION ON THE AUTOMATIC ASSIGNMENT OF INTRALATA TOLL TRAFFIC APPLIES ONLY TO NEW CUSTOMERS .....	4
II. THE COMMISSION SHOULD CLARIFY THE FACTORS IT WILL CONSIDER IN DECIDING WHETHER TO GRANT AN EXTENSION OF THE DIALING PARITY IMPLEMENTATION DEADLINE .....	8
III. THE COMMISSION SHOULD CLARIFY THE PROCEDURES A LEC MUST FOLLOW WHEN A STATE COMMISSION MAY NOT COMPLETE ITS REVIEW OF THE LEC'S TOLL DIALING PARITY IMPLEMENTATION PLAN IN A TIMELY MANNER .....	10
CONCLUSION .....	13
APPENDIX	

## SUMMARY

The Commission in this proceeding adopted rules that are intended to promote local competition in the markets for exchange and exchange access services. In the *Second Report and Order*, the Commission addressed several issues deemed important to the competitive process -- dialing parity, nondiscriminatory access, network disclosure, and numbering administration. GTE respectfully requests that the Commission clarify three aspects of the dialing parity rules it adopted.

First, the Commission should clarify that the prohibition on the automatic assignment of intraLATA toll traffic applies only to new subscribers. As written, the regulation adopted by the Commission is unclear, conflicts with the Commission's rejection of balloting, and is inconsistent with the goal of competitive neutrality. Moreover, this restriction could lead to customer anger and confusion associated with the use of access codes. Thus, to avoid any ambiguity and confusion, the Commission should clarify that the automatic assignment prohibition applies only to new customers.

Second, the Commission should clarify the factors it will consider in deciding whether to grant an extension of the dialing parity implementation deadline. Valid reasons for an extension should include: (1) the increased costs associated with accelerating the timing of switch upgrades and change-outs to meet the deadline; (2) the availability of equipment; (3) the increased risk of network failure from unreasonably accelerated implementation schedules; and

(4) the potential physical impossibility of a LEC changing out all switches by the required deadline. To ensure the submission of *bona fide* requests, the Commission should provide carriers with sufficient notice as to the factors that will constitute sufficient justification for an extension.

Finally, the Commission should clarify the procedures a LEC must follow when a state commission may not complete its review of the LEC's toll dialing parity implementation plan in sufficient time for the LEC to meet the implementation schedule. Some clarifications might include: (1) whether a LEC must file its dialing parity implementation plan with the Commission if there is a chance that a state commission will not act on the plan in a timely manner; (2) whether the Commission will permit a LEC to supplement a plan submitted to the Commission; and (3) whether the Commission will allow a LEC to withdraw a plan if the state completes its review in a timely fashion.

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**PETITION FOR CLARIFICATION**

GTE Service Corporation ("GTE"), pursuant to Section 1.429 of the Commission's Rules, by its attorneys, and on behalf of its affiliated domestic telephone operating and wireless companies, respectfully submits this Petition for Clarification of the *Second Report and Order* in the above-captioned proceeding.<sup>1</sup>

GTE seeks clarification of three aspects of the Commission's decision regarding dialing parity.

- First, the Commission should clarify that the prohibition on the automatic assignment of intraLATA toll traffic applies only to new customers.<sup>2</sup>
- Second, the Commission should clarify the factors it will consider in deciding whether to grant an extension of the dialing parity implementation deadline.

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<sup>1</sup> *Second Report and Order and Memorandum Opinion and Order*, FCC 96-333 (released August 8, 1996) ("*Second Report and Order*"). Public Notice of the *Second Report and Order* was given at 61 Fed. Reg. 47284 (Sept. 6, 1996).

<sup>2</sup> The Appendix to this Petition presents a modification to the Commission's Rules that addresses this concern.

- Third, the Commission should clarify the procedures a LEC must follow when a state commission may not complete its review of the LEC's toll dialing parity implementation plan in sufficient time for the LEC to comply with the implementation deadlines.

## INTRODUCTION

In the *Second Report and Order*, the Commission promulgated rules intended to facilitate the entry of competition into the local exchange and exchange access markets. Therein, the Commission addressed: (1) a LEC's obligation to provide its competitors with dialing parity and nondiscriminatory access to related services and functionalities; (2) the duty of incumbent LECs to make network information disclosures; (3) and numbering administration.<sup>3</sup> GTE limits its request for clarification to the subject of dialing parity. The clarifications and changes sought herein are necessary for a better understanding of the Commission's Rules and for ensuring compliance with Congressional and Commission goals.

Section 251(b)(3) of the Telecommunications Act of 1996 ("1996 Act") requires LECs "to provide dialing parity to competing providers of telephone exchange service and telephone toll service."<sup>4</sup> The Commission defined dialing parity to mean that customers of competitors should not have to dial extra digits to have their calls routed to another LEC's network.<sup>5</sup> This

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<sup>3</sup> *Second Report and Order* ¶¶ 2-3.

<sup>4</sup> 47 U.S.C. § 251(b)(3).

<sup>5</sup> *Second Report and Order* ¶ 4.

requirement applies to all telecommunications services that require dialing to route a call, including international, interstate, intrastate, local and toll services.<sup>6</sup> As part of its effort to develop national guidelines, the Commission required LECs to implement a full two-PIC presubscription methodology so that subscribers could choose separate interLATA and intraLATA carriers.<sup>7</sup> In addition, the Commission established a nationwide schedule for implementing dialing parity<sup>8</sup> and set forth the principles for a cost recovery mechanism.<sup>9</sup>

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<sup>6</sup> *Id.* ¶¶ 4, 29.

<sup>7</sup> *Id.* ¶¶ 5, 49-50.

<sup>8</sup> *Id.* ¶ 62.

<sup>9</sup> *Id.* ¶¶ 92-95.

**I. THE COMMISSION SHOULD CLARIFY THAT THE PROHIBITION ON THE AUTOMATIC ASSIGNMENT OF INTRALATA TOLL TRAFFIC APPLIES ONLY TO NEW CUSTOMERS**

In the *Second Report and Order*, the Commission adopted the following rule:

A LEC may not assign automatically a customer's intraLATA toll traffic to itself, to its subsidiaries or affiliates, to the customer's presubscribed interLATA or interstate toll carrier, or to any other carrier, except when, in a state that already has implemented intrastate, intraLATA toll dialing parity, the subscriber has selected the same presubscribed carrier for both intraLATA and interLATA toll calls.<sup>10</sup>

This rule is, at best, unclear. The quoted language could be read to prohibit a LEC from automatically assigning intraLATA toll traffic to *any* carrier, including itself, with one possible exception -- where, in a state with intraLATA toll dialing parity, the customer has selected the same carrier for both intraLATA and interLATA toll calls. However, even this exception is illusory: If the customer has selected the same carrier for both intraLATA and interLATA toll calls, the concept of automatic assignments becomes a non-issue, and no exception is warranted.

More importantly, such a construction is inconsistent with the Commission's intent as expressed in the *Second Report and Order*. There, the Commission indicated that it intended to preclude automatic assignments with respect to **new** customers only, not preexisting subscribers. The agency explained that "[n]ew customers of a telephone exchange service provider who fail affirmatively to select a provider of telephone toll service, after being

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<sup>10</sup> 47 C.F.R. § 51.209(c); see also *Second Report and Order* ¶ 41.



given a reasonable opportunity to do so, should not be assigned automatically to the customer's dial-tone provider or the customer's preselected interLATA toll or interstate toll carrier."<sup>11</sup>

Limitation of the automatic assignment prohibition only to new customers makes sense in light of the rule's underlying rationale. In adopting this rule, the Commission stated that it was concerned that a LEC would automatically designate "itself as a toll carrier without notifying the customer of the opportunity to choose an alternate carrier . . . ." <sup>12</sup> This concern is valid only in the context of new customers. GTE does not object to new customers being notified of their ability to select alternate local exchange, intraLATA, and interLATA carriers if they so desire. However, requiring LECs to notify preexisting customers of such options effectively would require balloting, an option the Commission expressly rejected -- a decision which was supported by a majority of commenters.<sup>13</sup> As the Commission acknowledges, "competitive providers of telephone exchange and telephone toll service have an incentive to make consumers aware of the choices available," and there is "no need to prescribe detailed consumer notification or carrier selection procedures at this time."<sup>14</sup>

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<sup>11</sup> *Second Report and Order* ¶ 81 (emphasis added).

<sup>12</sup> *Id.* ¶ 386; see also *id.* ¶ 81.

<sup>13</sup> See *id.* ¶ 78.

<sup>14</sup> *Id.* ¶ 80.

In addition, application of the "automatic assignment" prohibition to preexisting LEC intraLATA toll customers would not be competitively neutral. The networks of most, if not all, LECs are based on Feature Group C ("FGC") signalling, while interexchange carriers ("IXCs") have networks based on Feature Group D ("FGD") signalling. The FGD "dial around" access codes that would be required of preexisting intraLATA toll customers to make calls cannot be used to access the FGC network of the LEC. In other words, if customers are forced to use access codes, LECs would be frozen out of providing intraLATA toll service to every customer that has not affirmatively selected GTE as a preferred carrier. It is hard to imagine a result that would be more at odds with the "competitive neutrality" generally required by the 1996 Act. Thus, to avoid any ambiguity, the Commission should clarify that the prohibition on the automatic assignments applies to new customers only.

This clarification will make the Commission's Rules consistent with the reality of how the conversion process will work. The reality is that, on Day Zero of implementing toll dialing parity, there will be no "automatic assignments" of customers. With dialing parity, new customers will be able to select their intraLATA toll carrier of choice when ordering telephone service. Preexisting customers will be able to change their intraLATA toll carrier should they so desire. Neither customer segment will be assigned "automatically" to any carrier.

The requested clarification also will ensure that preexisting intraLATA toll customers are not set adrift on Day Zero of dialing parity. As noted

above, an argument that the LECs' retention of preexisting intraLATA toll customers on Day Zero somehow constitutes an "automatic assignment" of their intraLATA toll traffic will force customers to use access codes (many for the first time) to make intraLATA toll calls until they make their carrier choice.<sup>15</sup> The widespread customer anger and confusion that inevitably will result from blocked calls, misunderstandings on the use of access codes, different toll charges appearing on monthly bills, etc., will be monumental, wholly unnecessary and utterly inconsistent with the public interest. The Commission could not possibly have intended such a result

In light of the foregoing, the Commission should clarify that the prohibition on the automatic assignment of intraLATA toll traffic applies only to new customers. Language in the Appendix to this Petition would accomplish this clarification.

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<sup>15</sup> "[C]onsistent with current practices in the interLATA toll market, such nonselecting customers should dial a carrier access code to route their intraLATA toll or intrastate toll calls to the carrier of their choice until they make a permanent, affirmative selection." *Second Report and Order* ¶ 81.

**II. THE COMMISSION SHOULD CLARIFY THE FACTORS IT WILL CONSIDER IN DECIDING WHETHER TO GRANT AN EXTENSION OF THE DIALING PARITY IMPLEMENTATION DEADLINE**

The *Second Report and Order* establishes a schedule for implementing dialing parity. All LECs, including BOCs, must implement toll dialing parity no later than February 8, 1999. In addition, dialing parity must be provided throughout a state coincident with a LEC's provision of in-region, interLATA or in-region, interstate toll services in that state. LECs, other than BOCs, that are either already offer or plan to begin providing in-region, interLATA or in-region, interstate toll services before August 8, 1997, must implement toll dialing parity by August 8, 1997. Smaller LECs may petition their state commission for a suspension or modification of this requirement.<sup>16</sup> To the extent a LEC is unable to comply with the August 8, 1997 deadline, that LEC is required to notify the Commission's Common Carrier Bureau by May 8, 1997. "The notification must state, in detail, the justification for the LEC's inability to comply by August 8, 1997 and set forth the date by which it will be able to implement toll dialing parity."<sup>17</sup>

GTE submits that the Commission should provide greater detail regarding the factors it will consider in any decision to grant an extension of the August 8, 1997 deadline. Such factors should include: (1) the increased costs associated with accelerating the timing of switch upgrades and change-outs to meet the deadline; (2) the availability of equipment; (3) the increased

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<sup>16</sup> *Id.* ¶ 7.

<sup>17</sup> *Id.* ¶ 61.

risk of network failure from unreasonably accelerated implementation schedules; and (4) the potential physical impossibility of a LEC changing out all switches by August 8, 1997. Each of these factors, operating alone or in conjunction with one another, could jeopardize a LEC's ability to meet the implementation schedule. Therefore, the Commission should indicate that these factors constitute sufficient justification for granting an extension.

Moreover, GTE urges the Commission to identify additional factors that it will consider in determining whether to grant an extension. For example, the Commission should clarify the types of activities that will be deemed economically unjustifiable and what weight, if any, the Commission will give to a LEC's compliance with a state commission plan that establishes an implementation schedule different from the Commission's schedule.

The Commission's commitment to dialing parity is clear. Indeed, the Commission reiterates that it "will not hesitate to take enforcement action, including monetary fines and other remedial measures against carriers that are unable to provide a compelling justification for failing to comply with Commission rules, particularly when they have been given a reasonable period within which to comply."<sup>18</sup> Given the penalties that can result from failure to comply with the implementation schedule, clarification as to what will constitute sufficient justification for an extension is warranted.

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<sup>18</sup> *Id.* ¶ 61 n.136.

**III. THE COMMISSION SHOULD CLARIFY THE PROCEDURES A LEC MUST FOLLOW WHEN A STATE COMMISSION MAY NOT COMPLETE ITS REVIEW OF THE LEC'S TOLL DIALING PARITY IMPLEMENTATION PLAN IN A TIMELY MANNER**

The *Second Report and Order* establishes a set of procedures related to toll dialing parity implementation plans. Specifically, the Commission directs each LEC to submit its plan for providing intraLATA toll dialing parity to the state regulatory commission for each state in which it provides telephone exchange service. The state must approve the plan before the LEC may implement toll dialing parity.<sup>19</sup> The Commission also requires each LEC to file its implementation plan with the Commission within a certain time frame, if the LEC "determines that a state commission has elected not to review the plan or will not complete its review in sufficient time for the LEC to meet the toll dialing parity implementation deadlines."<sup>20</sup>

GTE submits that it and other LECs are ill-equipped to forecast with any certainty the timing of state commission reviews and, therefore, requests clarification as to what steps the LECs must take to comply with the Commission's Rules. Under Section 51.213(c) of the new rules, if a LEC that begins providing in-region, interLATA or in-region, interstate toll service before August 8, 1997, determines that a state commission will not evaluate its toll dialing parity implementation plan in time to comply with the deadline, it must file its plan with the Commission "no later than 90 days after these rules are

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<sup>19</sup> 47 C.F.R. § 51.213(a); *see also Second Report and Order* ¶¶ 38-39.

<sup>20</sup> 47 C.F.R. § 51.213(c); *see also Second Report and Order* ¶ 39.

published in the Federal Register."<sup>21</sup> In other words, that LEC must submit the plan to the Commission by December 5, 1996.

This requirement places LECs in a difficult position. A LEC may not have sufficient information to determine whether a state commission will evaluate its plan sufficiently in advance of the date on which the LEC is required to implement dialing parity. Several LECs have already filed plans with the appropriate state commissions. In some states, implementation plans are under consideration by the state commissions. In others, hearings have been scheduled. Still, in others, tariffs have been suspended. Given the diversity in state responses and resources, LECs cannot know with any certainty whether states will be able to act in a timely manner. Accordingly, the Commission should provide LECs with some guidance as to what actions it expects LECs to take in such a situation.

The Commission should clarify whether a LEC will be required to file its dialing parity implementation plan with the Commission if it appears that there is a chance that a state commission will not act on the plan in a timely fashion. For example, in Missouri, the state commission has scheduled a February 10, 1997 hearing on GTE's implementation plan. It is entirely *possible* for the commission to issue a resulting order approving GTE's plan in time for GTE to meet its implementation deadline. In the absence of an express commitment from the Missouri commission to do so, however, it will

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<sup>21</sup> 47 C.F.R. § 51.213(c)(2). The rules adopted in the *Second Report and Order* were published in the Federal Register on September 6, 1996. 61 Fed. Reg. 47284 (Sept. 6, 1996).

not be possible for GTE to determine by December 5, 1996 whether the commission will issue a timely order.<sup>22</sup>

In addition to timing issues, the Commission should clarify whether it will permit a LEC to supplement a plan submitted to the Commission or to withdraw that plan if the involved state completes its review in a timely fashion. In other words, once a LEC has submitted its implementation plan to the Commission, should the LEC continue to take any direction from the involved state or should it defer solely to the Commission?

Answers to these types of questions will provide LECs with much needed direction on how to proceed in the sometimes sensitive realm of overlapping federal/state regulatory oversight. The Commission can minimize the potential confusion and uncertainty by establishing guidelines for the LECs in the types of situations described above.

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<sup>22</sup> GTE's concern is not limited to Missouri. At least nine other GTE states are at various stages in the approval process. Some have announced plans to open dockets; others have scheduled hearings; still others have only to issue an order. In the absence of further guidance from the Commission, GTE sees no alternative but to file an implementation plan for each state that has not acted on GTE's plan by December 5, 1996 and has not committed to a date by which it will act.



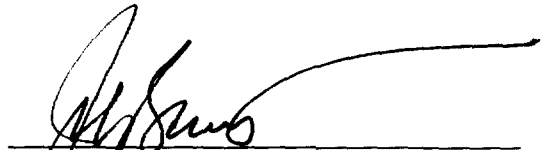
## CONCLUSION

GTE respectfully requests that the Commission clarify certain aspects of the *Second Report and Order* related to dialing parity. First, the Commission should clarify that the prohibition on the automatic assignment of intraLATA toll traffic applies only to new customers. Second, the Commission should clarify what constitutes sufficient justification for extending the dialing parity implementation deadline. Finally, the Commission should clarify the procedures a LEC must follow when it appears that a state commission may not complete its review of the LEC's toll dialing parity implementation plan in a timely manner.

Respectfully submitted,

GTE Service Corporation, on behalf  
of its affiliated domestic telephone  
operating and wireless companies

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## APPENDIX

### Recommended Amendment to the Rules Adopted in the *Second Report and Order*

1. Amend § 51.209 Toll dialing parity
  - (c) A LEC may not assign automatically ~~a customer's~~ intraLATA toll traffic ~~of any new customer~~ to itself, to its subsidiaries or affiliates, to the customer's presubscribed interLATA or interstate toll carrier, or to any other carrier ~~after the effective date of implementation of intrastate, intraLATA toll dialing parity.~~ ~~except when, in a state that has already implemented intrastate, intraLATA toll dialing parity, the subscriber has selected the same presubscribed carrier for both intraLATA and interLATA toll calls.~~